

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CRYSTAL KRUEGER, an individual on  
behalf of herself and others similarly situated,

Plaintiff,

v.

ALASKA AIRLINES, INC.,

Defendant.

CASE NO. C22-1777-JCC

ORDER

This matter comes before the Court on Plaintiff's renewed motion to remand (Dkt. No. 53) and the parties' stipulated motions to seal (Dkt. Nos. 57, 67). Having thoroughly considered the parties' briefing and the relevant record, and finding oral argument unnecessary, the Court hereby GRANTS the motions for the reasons explained herein.

**I. BACKGROUND**

Plaintiff Crystal Krueger filed a class action complaint in King County Superior Court against Defendant Alaska Airlines, Inc., alleging Defendant's "practices and policies" deny flight attendants statutorily required meal periods, rest breaks, minimum wage, and overtime wage pay. (Dkt. No. 1-2 at 10–11.) In December 2022, Defendant removed to federal court, citing the Class Action Fairness Act ("CAFA"). (Dkt. No. 1 at 3.) Plaintiff subsequently moved to remand, arguing, among other things, that the action falls within the "home state" exception to CAFA

jurisdiction. (*See* Dkt. No. 10 at 1–2.) The Court denied Plaintiff’s motion in March 2023, finding she failed to show, “by a preponderance of the evidence, [that] at least . . . two-thirds of the flight attendants in her proposed class are Washington citizens”—as is required for application of the “home state” exception. (Dkt. No. 21 at 5.) Plaintiff renews the motion (Dkt. No. 53). But this time, supports her argument with an expert statistical report purporting to establish, by a preponderance of evidence, that at least two-thirds of class members are Washington citizens. (*See* Dkt. Nos. 53, 54.) Defendant renews its opposition to remand. (*See* Dkt. No. 59.)

## II. DISCUSSION

### A. Timeliness of Motion to Remand

As an initial matter, Defendant argues Plaintiff’s renewed motion to remand is untimely under 28 U.S.C. § 1447(c). (*See* Dkt. No. 59 at 14–17.) The Court disagrees. “A motion to remand on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days” of removal. 28 U.S.C. § 1447(c). But because “exceptions to CAFA jurisdiction are ‘akin to an abstention doctrine,’ they are not viewed as a ‘defect’ under § 1447(c) which triggers the 30-day limitation.” *Cox v. Holcomb Fam. Ltd. P’ship*, 2014 WL 5462022, slip op. at 5–6 (D. Or. 2014) (citing *Kamm v. ITEX Corp.*, 568 F3d 752, 755 (9th Cir. 2009) (the 30-day limit did not apply to a forum selection clause because it was not a “defect” within the meaning of the removal statute)).<sup>1</sup> Accordingly, Plaintiff’s renewed motion to remand based on CAFA’s “home state” exception is not precluded by the 30-day deadline in § 1447(c).

Because the 30-day deadline is inapplicable, the remaining question is whether Plaintiff waived her right to remand. Such a waiver occurs where a plaintiff (1) fails to file a motion

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<sup>1</sup> Although the Ninth Circuit has not definitively ruled on this issue, “a clear majority of . . . federal appellate courts that have considered [it] have held that the thirty-day limitation of § 1447(c) does not apply to a motion to remand on the basis of abstention or other bases not encompassed in § 1447(c).” *Lippincott v. PNC Bank, NA*, 2012 WL 1894275, slip op. at 4 (D. Md. 2012) (citations omitted).

1 within a reasonable time or (2) engages in affirmative conduct or unequivocal assent of a sort  
 2 which would render it offensive to fundamental principles of fairness to remand. *Angulo v.*  
 3 *Providence Health & Servs. - Washington*, 2024 WL 1252412, slip op. at 3 (W.D. Wash. 2024).  
 4 Based on the facts of this case, the Court cannot conclude that Plaintiff waived her right to  
 5 remand.

6 After Defendant removed this case, (*see* Dkt. No. 1), Plaintiff moved to remand less than  
 7 a month later, timely raising arguments based on CAFA’s home state exception. (*See* Dkt. No.  
 8 10.) The Court denied that motion. (*See* Dkt. Nos. 19, 21.) Plaintiff then sought reconsideration,  
 9 (*see* Dkt. No. 20), which the Court denied. (*See* Dkt. No. 29.) Plaintiff renewed her motion to  
 10 remand (Dkt. No. 53) approximately 11 months after the Court’s denial of reconsideration (Dkt.  
 11 No. 29), eight months after the Ninth Circuit’s denial of permission to appeal (Dkt. No. 37), and  
 12 three months after Defendant moved to dismiss (Dkt. No. 42). Most importantly, though,  
 13 Plaintiff’s renewed motion comes only two and a half months after her receipt of the class list  
 14 from Defendant. (Dkt. No. 62 at 1, 3–4.) And according to Plaintiff, it was through this list that  
 15 she learned, for the first time, class members’ names and addresses—information under  
 16 Defendant’s control and necessary for determining citizenship. (*Id.* at 3.) This course of conduct,  
 17 in the Court’s view, reflects neither an unreasonable delay in seeking remand nor affirmative  
 18 conduct amounting to waiver. *See Angulo*, 2024 WL 1252412, slip op. at 3 (finding no waiver  
 19 where plaintiff filed renewed remand motion within 10 months of initial remand motion and four  
 20 months after jurisdictional discovery).

21 Accordingly, the Court finds Plaintiff’s renewed motion (Dkt. No. 53) is timely.<sup>2</sup>

## 22 **B. Applicability of CAFA’s Home State Exception**

23 “CAFA significantly expanded federal jurisdiction in diversity class actions.” *Jauregui v.*

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24 <sup>2</sup> Alternatively, Defendant argues the Court should resolve their pending motion to dismiss  
 25 before ruling on the motion to remand. (*Id.* at 18–19.) Again, the Court disagrees given the  
 26 complexity of the issues presented in Defendant’s motion to dismiss. *See Ruhrgas AG v.*  
*Marathon Oil Co.*, 526 U.S. 574, 588 (1999).

1 *Roadrunner Transp. Servs., Inc.*, 28 F.4th 989, 992 (9th Cir. 2022). It provides federal district  
2 courts with original jurisdiction over class actions when there is minimal diversity, a proposed  
3 class of at least 100 members, and an amount in controversy exceeding \$5 million. 28 U.S.C.  
4 § 1332(d)(2). But even if these requirements are met, district courts *must* decline jurisdiction  
5 when “two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and  
6 the primary defendants, are citizens of the State in which the action was originally filed.” *Id.*  
7 § 1332(d)(4)(B). This is known as the “home state” exception. *Serrano v. 180 Connect, Inc.*, 478  
8 F.3d 1018, 1022–23 (9th Cir. 2007).

9 To meet this burden, the moving party must provide “some facts in evidence from which  
10 the district court may make findings regarding class members’ citizenship.” *Mondragon v.*  
11 *Capital One Auto Fin.*, 736 F.3d 880, 884 (9th Cir. 2013). While this “jurisdictional finding of  
12 fact should be based on more than guesswork,” a court may “make reasonable inferences from  
13 facts in evidence.” *Id.* at 886. These factual findings must be made under a preponderance of the  
14 evidence standard. *Id.* at 884. Plaintiff argues that newly obtained evidence reveals that CAFA’s  
15 home state exception applies to this case. (Dkt. No. 53 at 1, 5.) For the reasons described below,  
16 the Court agrees.

17 Plaintiff submits an expert report examining a list of 2,894 class members and their  
18 addresses—information obtained from Defendant during the initial discovery exchange. (*See*  
19 Dkt. Nos. 54, 55.) And to evaluate their likelihood of Washington citizenship, Plaintiff identified  
20 seven factors (“citizenship factors”): residence, voter registration, property ownership, place of  
21 employment, driver’s license, vehicle registration, and payment of taxes. (Dkt. No. 53 at 3.)  
22 Plaintiff then applied these factors using two different sets of criteria: the “residence-plus-three”  
23 test and the “five-or-more” test. (Dkt. No. 54 at 4.) A class member passed the “residence-plus-  
24 three” test if they were a Washington resident and met at least three additional Washington  
25 citizenship factors. (*Id.*) A class member passed the “five-or-more” test if they had evidence of at  
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1 least five Washington citizenship factors. (*Id.*)

2 Applying these tests, Plaintiff contends that (1) every class member has a Washington  
3 address, (2) 94% of a random sample of 100 class members meets the “residence-plus-three”  
4 test, and (3) 80% of a random sample of 100 class members meets the “five-or-more-factors”  
5 test. (*Id.* at 2.) These data points, according to Plaintiff and her expert, conclusively establish that  
6 at least two-thirds of the class are Washington citizens. (Dkt. No. 53 at 3.)

7 In response, Defendant mainly takes issue with Plaintiff’s methodology. (*See generally*  
8 Dkt. No. 59.) Defendant argues Plaintiff’s analysis is flawed because (1) it relies on facts that did  
9 not exist at the time of removal, (2) it assumes a class member’s mailing address is a proxy for  
10 residence, (3) it fails to account for flight attendants’ frequent use of “crash pads,” along with  
11 those whose addresses were P.O. boxes, UPS stores, or shared with another flight attendant, (4) it  
12 relies on irrelevant factors such as employment status, and (5) it fails to account for intent to  
13 remain and/or non-forum citizenship. (*Id.* at 22–26.)<sup>3</sup> Although the Court agrees that Plaintiff’s  
14 analysis contains imperfections, the Court nevertheless concludes that Plaintiff meets her burden  
15 of establishing that at least two-thirds of class members are Washington citizens for the  
16 following reasons:

17 First, to the extent Plaintiff’s 100-person sample included flight attendants who were not  
18 class members at the time of removal, such inclusion is minimal and does not undermine  
19 Plaintiff’s overall conclusion. Indeed, there are only six such individuals. (*See* Dkt. No. 62 at 8.)  
20 And even excluding these six individuals from the sample, which Plaintiff does in response to  
21 Defendant’s objection, (*see* Dkt. Nos. 63 at 1–4, 65 at 5), Plaintiff can still demonstrate that at  
22 least two-thirds of class members are Washington citizens, given the significant cushion  
23 provided by her additional evidence and analysis. (*See* Dkt. No. 63 at 3) (expert’s supplement  
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25 <sup>3</sup> Notably, Defendant does not oppose Plaintiff’s use of randomized statistical sampling to  
26 evaluate citizenship. (*See generally id.*) Accordingly, the Court focuses its analysis on the  
sampled class members.

1 declaration indicating a 95% probability that 91.7–99.7% of class members in the 94-person  
2 sample meet the “residence-plus-three” test and that 73–88.6% meet the “five-or-more-factors”  
3 test).<sup>4</sup>

4 Second, Defendant’s other arguments are similarly undermined by “the substantial  
5 cushion afforded by the percentage of class members with last known [Washington] addresses.”  
6 *See Adams v. W. Marine Prod., Inc.*, 958 F.3d 1216, 1223 (9th Cir. 2020). It is undisputed that  
7 every single class member provided Defendant, their employer, with a Washington state address.  
8 (*See* Dkt. Nos. 59 at 23, 62 at 9.) And while “last known mailing addresses are not a direct proxy  
9 for residence,” it can provide indirect evidence of residence, particularly where a significant  
10 portion of class members’ last known addresses are in that state. *See Adams*, 958 F.3d at 1223  
11 (plaintiff “readily met her burden” by offering evidence that over 90% of class members had last  
12 known mailing addresses in California).<sup>5</sup> Moreover, the Court is not persuaded that those who  
13 provided P.O. box or UPS store addresses do not, in fact, reside in Washington. And to the extent  
14 there remains any doubt, Plaintiff’s skip-tracing returned residential street addresses in  
15 Washington for the four individuals who provided Defendant with a P.O. box or UPS store  
16 address. (*See* Dkt. Nos. 62 at 9–10) (citing Dkt. No. 63 at 6–7, 10).

17 Third, Plaintiff provides sufficient evidence of class members’ intent to remain, through  
18 Plaintiff’s application of the citizenship factors. Plaintiff has evaluated *each* of these seven  
19 factors with respect to the sampled class members. (*See* Dkt. No. 55.) And based on this  
20 evaluation, she asserts there is a 95% probability that 91.7–99.7% of class members in the 94-  
21 person sample meet the “residence-plus-three” test and that 73–88.6% meet the “five-or-more-

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22 <sup>4</sup> The same logic applies to Defendant’s argument that one flight attendant in the sample  
23 registered to vote in Washington *after* this case was filed. (*See* Dkt. No. 59 at 22.)

24 <sup>5</sup> Concededly, plaintiff in *Adams* was found to have met the lower burden for *discretionary*  
25 remand. *See id.* at 1222–23. This required a showing that more than one-third (rather than two-  
26 thirds) of class members were citizens of the state in which the action was originally filed. *See* 28  
U.S.C. § 1332(d)(3). Nonetheless, because Plaintiff here has provided ample *additional* evidence  
of class members’ Washington citizenship, *Adams*’ logic remains applicable.

1 factors” test. (Dkt. No. 63 at 3.) As the Ninth Circuit has explained, “intention to remain may be  
2 established by factors such as: current residence; voting registration and practices; location of  
3 personal and real property; . . . place of employment or business; driver’s license and automobile  
4 registration; and payment of taxes.” *Kyung Park v. Holder*, 572 F.3d 619, 624–25 (9th Cir.  
5 2009). Drawing reasonable inferences from the facts in evidence, the Court concludes that a  
6 significant portion of class members—and at least two thirds—are Washington citizens who  
7 intend to remain in the state. *See Brinkley v. Monterey Fin. Servs., Inc.*, 873 F.3d 1118, 1121 (9th  
8 Cir. 2017).

9 Fourth, Defendant’s remaining arguments are largely speculative and impose upon  
10 Plaintiff a higher burden than that required by law. For example, Defendant suggests that class  
11 members who share a Washington address are somehow less likely to be Washington residents.  
12 (*See* Dkt. No. 59 at 24.) But as Plaintiff correctly notes, the more probable explanation is that  
13 such class members are roommates or, in the case of those sharing a last name, are related. (*See*  
14 Dkt. No. 62 at 10.) And beyond pointing to a handful of class members whom Plaintiff  
15 erroneously counted as Washington citizens, Defendant has not cast doubt as to the overall  
16 veracity of Plaintiff’s analysis.

17 Based upon its review of all the evidence put forth, including the significant cushion  
18 provided by class members’ Washington mailing addresses, the Court is satisfied that Plaintiff  
19 has met her burden of showing that, more likely than not, at least two-thirds of putative class  
20 members are Washington citizens. This triggers application of CAFA’s mandatory home state  
21 exception under 28 U.S.C. § 1332(d)(4)(B). Fundamentally, the Ninth Circuit has “caution[ed]  
22 that CAFA does not demand a plaintiff show the citizenship of each class member with certainty  
23 beyond a reasonable doubt.” *Adams*, 958 F.3d at 1223. This is because “requiring a district court  
24 to ‘examin[e] the domicile of every proposed class member before ruling on the citizenship  
25 requirement’ would render class actions ‘totally unworkable.’” *Id.* (citing *Preston v. Tenet*  
26 *Healthsystem Mem’l Med. Ctr., Inc.*, 485 F.3d 804, 816 (5th Cir. 2007)).

